

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Community Affairs Committee

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BILL: CS/CS/SB 1510

INTRODUCER: Community Affairs Committee, Children and Families Committee and Senator Lynn

SUBJECT: Child Care Facilities

DATE: March 28, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanford</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Herrin</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	_____	_____	<u>HA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This committee substitute for committee substitute (CS) requires child care providers to maintain compliance with child care standards in order to maintain their status as Gold Seal Quality Care providers. It authorizes the revocation of a facility's designation as a Gold Seal Quality Care provider for failing to meet specified standards. It requires the Department of Children and Family Services (DCF) to promulgate rules which provide criteria and procedures for reviewing and approving accrediting associations for participation in the Gold Seal Quality Care program, conferring and revoking designations of Gold Seal Quality Care providers, and classifying violations.

The CS revises provisions relating to the background screening of volunteers in child care settings regulated by DCF to make those provisions consistent with the screening requirements for other child care personnel.

The CS amends provisions relating to DCF's enforcement authority in registered family day care homes to provide the same escalating enforcement options available in other child care settings. Also, it provides the DCF with the option of converting the license or registration of certain child care facilities to probation status. The DCF is required to adopt rules to establish the grounds for denial, suspension, revocation, or probation status for a license or registration for certain violations. The DCF must also establish a uniform system of procedures to impose disciplinary sanctions on licensed child care facilities, licensed large family child care homes, and licensed or registered family day care homes.

The CS extends the ability of DCF to issue provisional licenses to registered (as well as licensed) child care providers. The CS provides DCF with specific rule-making authority relating to safety standards in licensed family day care homes.

The CS moves responsibility for the Teacher Education and Compensation Helps (TEACH) program from DCF to the Agency for Workforce Innovation.

Finally, the CS creates s. 402.317, F.S., to allow child care to be provided for 24 hours or longer when the parent or legal guardian works a shift of 24 hours or longer. This new section requires that the employer document the shift assignment and limits the total child care to 72 consecutive hours in any seven-day period. It authorizes waiving all time limitations for child care when a state of emergency has been declared.

The CS substantially amends the following sections of the Florida Statutes: 402.281, 402.3017, 402.302, 402.309, 402.310, 402.313, and 402.3131. It also creates section 402.317 of the Florida Statutes.

## II. Present Situation:

The Department of Children and Family Services (DCF) is responsible for administering child care regulations in Florida,<sup>1</sup> unless a county has chosen to assume this function pursuant to s. 402.306, F.S.<sup>2</sup> The child care settings to which statutory child care regulation applies are as follows:

- *Child care facilities*, which provide child care to more than five children who are unrelated to the operator and for whom a payment is received for the care.<sup>3</sup>
- *Family day care homes*, which are residences where child care is provided for between four and ten children, depending on their ages, from at least two unrelated families for a fee.<sup>4</sup>
- *Large family child care homes*, which are residences where child care is provided for up to 12 children depending on the ages of the children<sup>5</sup> from at least two unrelated families for a fee.

### Licensing Requirements

- *Child care facilities* are required to be licensed unless exempted.<sup>6</sup>
- *Family day care homes* are required to be licensed only under the following circumstances:<sup>7</sup>
  - County licensing ordinances require licensure,
  - The home is participating in the subsidized child care program,<sup>8</sup> or
  - The Board of County Commissioners has passed a resolution requiring licensure.

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<sup>1</sup> Sections 402.301 through 402.319, F.S.

<sup>2</sup> Currently, seven counties have chosen to assume the responsibility of regulating child care in their counties.

<sup>3</sup> Section 402.302(1), F.S.

<sup>4</sup> Section 402.302(7), F.S.

<sup>5</sup> Section 402.302(8), F.S.

<sup>6</sup> Licensing standards are set forth in s. 402.305, F.S.

<sup>7</sup> Section 402.313(1), F.S.

<sup>8</sup> Now the early learning program under the Agency for Workforce Innovation.

- *Family day care homes not licensed* must **register** annually with DCF, providing certain information and complying with statutory requirements such as background screening, training, and maximum number of children in care.<sup>9</sup>
- *Large family child care homes* are required to be licensed.<sup>10</sup>

### **Enforcement**

The Department of Children and Family Services has issued administrative guidelines classifying violations into three categories. Decisions about the application of sanctions are governed by these guidelines.

- A Class I violation is considered a violation that is serious in nature and could or does result in death or serious harm to the health, safety, or well-being of a child.
- A Class II violation is a serious violation that does not pose an immediate threat to the safety or health of the children in care, but could reasonably be expected to cause harm within 90 days.
- A Class III violation is the least serious violation type and is generally related to the maintenance and operation of the child care facility.

The sanctions available to licensing authorities are set forth in statute,<sup>11</sup> providing the following options:

- **The imposition of an administrative fine:** Section 402.309, F.S., permits the imposition of a fine of up to \$100 per violation per day and, if the violation causes or could cause death or serious harm, up to \$500 per violation per day. Sections 402.313 and 402.3131, F.S., also provide for imposing administrative fines on family day care homes or large family child care homes not to exceed \$100 for family day care homes and \$1,000 for large family child care homes which conflicts with the fines authorized in s. 402.309, F.S.
- **The denial, suspension, or revocation of a license:** Section 402.309, F.S., authorizes the licensing agency to deny, suspend, or revoke a license.
- **An injunction to close a child care setting:** Section 402.312, F.S., permits the licensing authority to seek an injunction to close a child care facility, family day care home, or large family child care home for operating without a license or registration, violating the standards which threatens harm to the children, repeated violations of the standards, or continuing to serve children beyond the established closing date.

### **Gold Seal Quality Care Program**

In 1996, the Florida Legislature established the Gold Seal Quality Care program to recognize those child care facilities and homes that are accredited by nationally recognized associations whose standards reflect a level of quality of child care that exceeds minimum licensing standards. A private prekindergarten provider must be Gold Seal or otherwise accredited in order to participate in the Voluntary Universal Prekindergarten program.<sup>12</sup> This requirement has resulted in heightened awareness of Gold Seal and its correlation to quality child care.

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<sup>9</sup> Sections 402.302(7), 402.302(13), and 402.313, F.S.

<sup>10</sup> Section 402.3131, F.S.

<sup>11</sup> Sections 402.309, 402.312, 402.313, and 402.3131, F.S.

<sup>12</sup> Section 1002.55(3), F.S.

Gold Seal status is conferred at the request of the provider upon becoming accredited by an accrediting agency that has been recognized by DCF as having accreditation standards that substantially meet or exceed the standards set by the National Association for the Education of Young Children (NAEYC), the National Association of Family Child Care, or the National Early Childhood Program Accreditation Commission. The accrediting standards of an approved accrediting agency may or may not address a provider's regulatory compliance history. Current law, does not provide the DCF with the authority to "revoke" a provider's Gold Seal status based on non-compliance with state child care standards, nor does it provide the department with the authority to require the accrediting agency to revoke the provider's accreditation for the same.<sup>13</sup>

### **Background Screening of Volunteers**

Current law contains the following conflicting language relating to the background screening of volunteers in a child care setting:

- Pursuant to s. 402.302(3), F.S., volunteers who work more than 40 hours per month are considered "child care personnel" for purposes of background screening. Pursuant to s. 402.305(2), F.S., "child care personnel" are subject to a Level 2 background screening.
- However, s. 402.302(13), F.S., states that screening for volunteers who meet the definition of child care personnel includes only a local criminal records check and a statewide criminal records correspondence check (not an employment history check or federal criminal records check).

### **Enforcement Authority in Registered Family Day Care Homes**

Although current law provides a series of enforcement options for non-compliance with uniform child care standards in licensed child care facilities, licensed family day care homes, and large family child care homes, DCF currently has very limited enforcement authority with regard to *registered* family day care homes.<sup>14</sup> Enforcement authority in registered family day care homes is currently limited to either a \$100 fine or injunctive action, without the additional series of escalating enforcement actions available regarding other types of providers (for example, suspension or revocation of a registration).<sup>15</sup>

The department or local licensing agency is authorized to seek an injunction in the circuit court where the facility is located to enjoin continued operation of such family day care home under the following circumstances (s. 402.312, F.S.):

- A family day care home is being operated without a license or registration;
- There is any violation of the standards applied under ss. 402.301-402.319, F.S., which threatens harm to any child in the family day care home;

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<sup>13</sup> Section 402.281, F.S.

<sup>14</sup> Registered family day care homes are those not required to be licensed. According to statute, family day care homes are required to be licensed if a local ordinance so requires or if they participate in the subsidized child care program, s. 402.313(1)(a), F.S. However, DCF has interpreted federal law requiring parents to have free access to subsidized child care programs to supersede the Florida state law, with the practical effect that only those family day care homes which are required to be licensed by local ordinance are required to be licensed. All others are only required to be registered.

<sup>15</sup> Section 402.313(1)(b), F.S.

- A registrant has repeatedly violated the standards provided for under ss. 402.301-402.319, F.S.; or
- A family day care home continues to have children in attendance after the closing date established by the department or the local licensing agency.

Section 402.310, F.S., relating to escalating administrative actions (fines, suspension, and revocation) applies specifically to *licensed* child care providers. As a result, DCF's ability to timely and consistently assure the safety of children in care in registered family day care homes is more limited than in other child care settings.

### **Administrative Fines and Penalties**

Current law contains confusing and contradictory provisions regarding fines and penalties for non-compliance with child care standards:

- Section 402.310(1)(a), F.S., which applies only to *licensed* facilities and *licensed* family day care homes, describes a graduated system of penalties for violation of licensing standards. These penalties include denial, suspension, or revocation of the license or the imposition of an administrative fine not to exceed \$100 per violation per day. If the violation could or does cause death or serious harm to a child, the department or local licensing agency may impose an administrative fine not to exceed \$500 per violation per day.
- Section 402.313(1)(b), F.S., authorizes the department or local licensing agency to “impose an administrative fine, not to exceed \$100, for failure to comply with licensure or registration requirements.” This section relates to both licensed and registered family day care homes so that, for licensed family day care homes, it is inconsistent with the provisions of s. 410.310(1)(a), F.S., in that it lacks the authorization denial, suspension or revocation of a license and the provision for increased penalties in more serious offenses. More problematically, this is the only penalty-related provision for registered family day care homes so that those homes are not subject to the same range of enforcement options as are available to the department or local licensing agency for licensed family day care homes.
- Section 402.3131(1)(a), F.S., authorizes the department or local licensing agency to impose an administrative fine, not to exceed \$1,000, for failure to comply with licensure requirements. This section relates to large family day care homes.<sup>16</sup>

### **Safety Standards in Licensed Family Day Care Homes**

The department currently has the authority to adopt rules relating to minimum safety standards for licensed child care facilities but not licensed family day care homes. The department's rulemaking authority relating to family day care homes is limited to “minimum *health* standards” rather than “health *and safety* standards.” This inconsistency leaves children in family day care homes more vulnerable to the risk of harm than children being cared for in other licensed child care settings.

### **Provisional Licenses**

A provisional license may be issued to applicants for child care licensure or to licensees who are unable to conform to all of the required standards if adequate provisions have been made for the health and safety of the child.<sup>17</sup> There is no similar provision for registered child care providers.

<sup>16</sup> The difference in the maximum number of children authorized to be cared for in a family day care home (10) and a large day care home (12) is two children, s. 402.302(7) and (8), F.S.

**Teacher Education and Compensation Helps (TEACH) Program**

The national TEACH program was established in 1989 to address the relationship between low compensation and low rates of retaining child care workers. Under the program, teachers are compensated for receiving additional training and education. Currently, 21 states, including Florida, have established the program. Since 2002, the TEACH program in Florida has been administered by the Agency for Workforce Innovation.

**Time Limitation for Child Care**

Section 402.302(1), F.S., defines “child care” as:

“the care, protection, and supervision of a child, **for a period of less than 24 hours a day on a regular basis**, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care”. (emphasis supplied)

This limitation has been reported to cause hardship for parents who work shifts of 24 hours, including firefighters, police officers, and military personnel.

**III. Effect of Proposed Changes:**

**Section 1** amends s. 402.281, F.S., relating to the Gold Seal Quality Care Program, to require a child care provider to maintain the following compliance history in order to achieve and maintain Gold Seal status:

- The child care provider must not have had any Class 1 deficiencies (as defined by rule) within the two years preceding application for Gold Seal Quality Care status. Commission of a Class 1 violation shall be grounds for termination of Gold Seal status until such time as the provider has established a two-year period with no Class 1 violations.
- The child care provider must not have had three or more Class 2 deficiencies (as defined by rule) within the two years preceding application for Gold Seal Quality Care status. Commission of three or more Class 2 violations within a two year period shall be grounds for termination of Gold Seal status until such time as the provider has established a one year period with no Class 2 violations.
- The child care provider must not have been cited for the same Class 3 violation (as defined by rule) three or more times within the two years preceding application for Gold Seal Quality Care status. Commission of the same Class 3 violation three or more times during a two year period shall be grounds for termination of Gold Seal status until such time as the provider has established a one year period with none of the same type of violation.

**Section 2** amends s. 402.302(13), F.S., relating to the screening of volunteers, to require volunteers who meet the definition of “child care personnel” to be subject to the same level of screening as other child care personnel.

**Section 3** amends s. 402.310, F.S., to revise language relating to disciplinary actions; hearings upon denial, suspension, or revocation of a license; and administrative fines to include *registered*

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<sup>17</sup> Section 402.309, F.S.

family day care homes. This revision provides DCF with the authority necessary to enforce through consistent fines and the ability to revoke or suspend registration the minimum standards for registered family day care homes and ensure greater protection for children in care. This CS also gives DCF the option of converting the license or registration of certain child care facilities to probation status. This probation status may not exceed six months and may not be renewed. If a periodic inspection during the probationary status finds the licensee or registrant is not in compliance with the terms of probation or is not making sufficient progress towards compliance, the department may revoke the probation-status license or registration.

The DCF is required to adopt rules to establish the grounds for denying, suspending, revoking, or placing a registration or license on probation status. This CS also requires DCF to have a uniform system of procedures for imposing disciplinary sanctions on certain child care facilities in effect on January 1, 2007. The procedures must ensure the consistent application of disciplinary actions across districts and a progressively increasing level of penalties from predisciplinary actions to severe disciplinary sanctions. These disciplinary sanctions shall apply to licensed child care facilities, licensed large family day care homes, and licensed or registered family day care homes.

The CS provides for the imposition of an administrative fine with a maximum of \$100 per violation, per day, regardless of the type of child care setting. This is consistent with current guidelines for fines imposed on licensed child care centers.

**Section 4** amends s. 412.313, F.S. to make conforming changes relating to administrative fines. It also revises current statutory language regarding licensed family day care homes to provide rulemaking authority to DCF regarding minimum safety standards.

**Section 5** amends s. 412.3131, F.S. to make conforming changes relating to administrative fines.

**Section 6** renumbers s. 402.3017, F.S., as s. 411.0103, F.S., and amends it to recognize the current situation in which AWI, rather than DCF, administers the TEACH program.<sup>18</sup>

**Section 7** amends s. 402.309, F.S., to authorize a licensing agency to issue provisional registrations to family day care homes that are unable to conform to statutory requirements, as well as provisional licenses to child care facilities, family day care homes required to be licensed, and large family child care homes. The option of issuing a provisional license if the screening material has been timely submitted but has not been processed is specifically limited to child care facilities.<sup>19</sup> The licensing agency is explicitly authorized to revoke provisional licenses and registrations. The issuance of a provisional license or registration is limited to the initial license or registration or upon renewal of the license or registration. The department is directed to adopt rules which provide for the conditions and procedures for issuing, as well as suspending or revoking, a provisional license or registration.

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<sup>18</sup> This administration has occurred pursuant to the General Appropriations Act implementing bill since 2002.

<sup>19</sup> Family day care homes and large family child care homes are excluded from this option because of the potential danger to the children since there is often only the one person who is caring for the children and for whom the screening is being processed.

**Section 8** amends s. 402.317, F.S., to allow child care to be provided for 24 hours or longer for a child whose parent or legal guardian works a shift of 24 hours or more. The requirement for working a shift of 24 hours or more must be documented by the employer and the documentation must be maintained in the child care facility. The time that a child remains in child care is limited to 72 consecutive hours in any seven day period. During a state of emergency, however, the licensing agency is authorized to temporarily waive the time limitations.

**Section 9** provides the act shall take effect July 1, 2006.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None

B. Private Sector Impact:

Licensed and registered family day care homes may be subject to an increased administrative fine since, in rectifying the inconsistent administrative fine provisions, the \$100 limit established in s. 402.313, F.S., is removed and the fine of up to \$100 per violation per day is retained, thus becoming the basis for determining the fine to be imposed. Similarly, large family child care homes may be subject to different administrative fines because the \$1,000 limit in s. 402.3131, F.S., is removed and the fine of up to \$100 per violation per day is retained.

C. Government Sector Impact:

The DCF predicts no fiscal impact from this CS.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The provisions of this CS were developed by the DCF in consultation with the Florida Family Child Care Homes Association, the Florida Association of Child Care Management, the National Association of Child Development Education, the Florida Children's Forum, the Florida Partnership for School Readiness, and the Early Childhood Association of Florida.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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